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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,990	12/30/2003	Stephen Anthony Gaeta	F6184(V)	6594

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EXAMINER
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ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/03/2006

53

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

10/747,990

Applicant(s)

GAETA, STEPHEN ANTHONY

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 11 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20051104</u> .                                                            | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Dreeszen (figs. 1 or 3 emb) in view of any one of Kuhn et al, Bryan or Coles et al.

Dreeszen discloses all structure of the claimed case and blank except formation of the maximum height of the front and/or rear walls less than the maximum height of the side walls. Each of Kuhn et al, Bryan and Coles et al teaches that it is known to make the front and rear walls in a box shorter than the other side walls and to make the attachment flaps with a short width relative to the overall width of the front and rear walls to provide a display window therebetween. It would have been obvious to make the front and rear walls and the attachment flaps in Dreeszen as taught by any one of Kuhn et al, Bryan or Coles et al to provide display of the contents through the front and rear of the box. The concept of making a display window in a box by making the wall and flaps of shorter length and width is well known in this art.

### ***Allowable Subject Matter***

3. Claims 10 and 11 are allowed.

### ***Response to Arguments***

4. Applicant's arguments filed 21 February 2006 have been fully considered but they are not persuasive.

The remarks assert that the prior art to Dreeszen fails to provide a suggestion that one should or could be modified to provide a viewing window into the carton by shortening the front or rear wall of the container. In response, it is agreed that the patent to Dreeszen fails to provide a suggestion to shorten at least one of the walls to form a viewing window into the carton. However, each of the patents to Kuhn et al, Bryan and Coles et al each would have suggested to one of ordinary skill in this art the provision of shorter walls and connecting flaps to provide at least one side which is shorter than the other side walls for the purpose of allowing display of the contents. It is believed that one of ordinary skill in this art would have found it obvious in view of the suggestion within any one of these references to modify an eight sided container as in Dreeszen to provide a display window as is clearly taught by the secondary references.

***Conclusion***

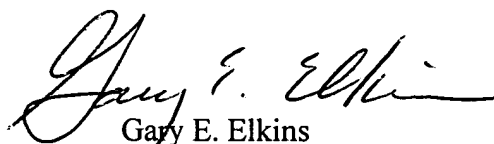
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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A handwritten signature in black ink, appearing to read "Gary E. Elkins". The signature is fluid and cursive, with the first name "Gary" being the most prominent.

Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee

01 May 2006